

CITY OF FAIRFIELD

RESOLUTION NO. 2015 - 232

RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A UTILITY AGREEMENT WITH KINDER MORGAN ENERGY PARTNERS, SFPP, L.P. AND TO APPROVE THE FUNDING FOR THE RELOCATION OF THEIR 20-INCH FUEL PIPELINE FOR THE JEPSON PARKWAY PHASE 2A PROJECT AND UPDATING THE 2015/16 AND 2016/17 BUDGET

WHEREAS, the Jepson Parkway Phase 2A Project widens Vanden Road between Peabody Road and 1,300 linear feet south of Canon Road; and

WHEREAS, SFPP, L.P. owns and maintains a 20-inch diameter steel pipeline located within Vanden Road which will need to be relocated to accommodate the roadway widening; and

WHEREAS, the City of Fairfield and SFPP, L.P. must enter into a Utility Agreement to facilitate the relocation; and

WHEREAS, the revised appropriations constitute an update to the 2015/16 and 2016/17 Budget approved pursuant to Resolution No. 2015-177 as amended.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Fairfield an Agreement between the City of Fairfield and SFPP, L.P. for the relocation of the 20-inch fuel pipeline in an amount not to exceed \$2,000,000 in a form approved by the City Attorney.

Section 2. The Public Works Director is hereby authorized to implement the above-mentioned agreement.

Section 3. The City Council hereby approves that appropriation of \$2,000,000 in unrestricted fund balance in Fund 261 (AB1600 Streets) transferred to Fund 252 Streets Capital Projects Division and Responsibility Code 99462 (Jepson Parkway Improvements) for the relocation of the 20-inch diameter steel pipeline in Vanden Road.

	<u>CURRENT</u>	<u>REVISED</u>
Fund 252 99462 Streets Capital Projects Jepson Parkway Improvements	\$11,000,000	\$13,000,000
Fund 261 AB1600 Streets	\$0	\$2,000,000

PASSED AND ADOPTED this 6th day of October 2015, by the following vote:

AYES: COUNCILMEMBERS: Price/Timm/Bertani/Moy/Vaccaro

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: Moy

ABSTAIN: COUNCILMEMBERS: NONE

Sam T. Price
MAYOR

ATTEST:

Karen L. Rees
CITY CLERK
PW

City of Fairfield

UTILITY AGREEMENT

County	Route	P.M.	Project #
Solano	Vanden Rd.	N/A	N/A
Fed. Aid. No. – RPSTPL-5132(045)			
Owner's File – N/A			
FEDERAL PARTICIPATION: On the Project : Yes On the Utilities: No			

UTILITY AGREEMENT NO. 2015.01

The City of Fairfield, hereinafter called "LOCAL AGENCY" proposes to widen Vanden Road from Peabody Road to 1,500 linear feet south of Canon Road as part of the Jepson Parkway Phase 2A project, within the City of Fairfield, Solano County, California.

And: SEPP, L.P.

hereinafter called "OWNER," owns and maintains LS-130, a 20-inch diameter steel fuel transmission pipeline; within the limits of LOCAL AGENCY's project that requires relocation of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE:

I-1. Work Performed by Owner per Owner's Plan:

In accordance with Notice to Owner No. Jepson 2A-2, dated August 18, 2015, OWNER shall relocate the 20-inch diameter fuel transmission pipeline as needed to reconcile conflicts with LOCAL AGENCY's project. All work shall be performed substantially in accordance with OWNER's plan, dated September 2014, consisting of 8 sheets, a copy of which is on file in the Office of the LOCAL AGENCY at 1000 Webster Street, Fairfield Ca 94533. Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

II-3. Local Agency's Expense - Superior Rights:

Existing facilities between station 1575+50 and 1613+00 are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY's expense.

II-6. Owner's Expense - Franchise:

The existing facilities between station 1546+00 and 1575+50 are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Sections (673) and (680) of the Streets and Highways Code.

Estimated Cost Split

Owner: \$500,000

Local Agency:\$2,000,000

III. PERFORMANCE OF WORK

III-2. Owner Performs Work by Competitive Bid Process:

OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

III-6. Prevailing Wages Requirements for Contracted Work:

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

OWNER has estimated that the cost for the work provided for by this agreement and, as hereinafter set forth, is the sum of \$2,500,000. LOCAL AGENCY shall establish an escrow account in the amount of \$2,000,000 to ensure payment for relocation work completed by OWNER where OWNER has superior rights as identified in II-3 above. OWNER will present invoices with supporting documentation to the LOCAL AGENCY for payment. In the event LOCAL AGENCY does not reject the invoice submitted by OWNER, within 30 days OWNER shall have the right and sole discretion to present invoice to Escrow for payment. The parties will execute escrow instructions consistent with this agreement, stating that upon presentation on invoice, OWNER shall be paid unilaterally without any additional approval. In the event that LOCAL AGENCY rejects the invoice, the parties shall resolve the dispute as expeditiously as possible.

The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER. The parties agree that as current configures, the work will not result in any betterment or salvage.

It is further agreed that upon receipt of the monies agreed to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest bearing account or trust in state or national banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code; and all interest earned by said monies advanced by LOCAL AGENCY quarterly, via a separate check, even when the cost of relocation exceeds the advance amount.

In the event actual relocation costs as established herein or pursuant to any future negotiation or litigation are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to the LOCAL AGENCY the difference between said actual cost and the sum of money so advanced. In the event that the above actual cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of the itemized bill as set forth herein.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress invoices or statements for costs incurred not to exceed OWNER's recorded costs as of the invoice or statement date less estimated credits applicable to completed work.

The OWNER shall submit a final bill to the LOCAL AGENCY, including any refund due to LOCAL AGENCY under the above terms, within 360 days after the completion of the work described in Section I above. Should OWNER have recorded costs in excess of the amount advanced above, OWNER shall submit a bill to the LOCAL AGENCY within 360 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of the Agreement, and LOCAL AGENCY has delivered to OWNER fully executed easement deeds, as required for OWNER's facilities, LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in the Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said costs from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided in Section I, a copy of said revised Notice to Owner shall suffice as documentation.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER's final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of the Agreement shall have the prior concurrence of LOCAL AGENCY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final bill and will be available for audit by State and/or Federal auditors, OWNER, in conjunction with the LOCAL AGENCY, agrees to comply with audit principles and standards as set forth in 48 CFR, Chapter 1, Part 31 et seq., 23 CFR Chapter 1, Part 65 and/or 10 CFR Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse LOCAL AGENCY upon receipt of LOCAL AGENCY billing.

V. GENERAL CONDITIONS

V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:

All costs accrued by OWNER as a result of LOCAL AGENCY's request of July 8, 2015 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

V-2. For All Owners - Notice of Completion:

OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.

V-4. Local Agency to Provide New Rights of Way Over Local Agency Lands:

Such Easement Deeds as deemed necessary will be delivered to OWNER within 45 days of relocation construction completion, conveying new rights of way for portions of the facilities relocated under this Agreement over available LOCAL AGENCY owned property outside the limits of the roadway right of way. OWNER's easement documentation attached hereto as Exhibit A.

New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way.

V-11a. Utility Owner Self Certification Method:

Owner understands and acknowledges that this project is subject to the requirements of the Buy America (BA) law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where BA requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying BA compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.

V-13. Pipeline Protection and Inspection Agreement:

Prior to the start of the Jepson Parkway Phase 2A roadway construction work, LOCAL AGENCY and OWNER shall enter into OWNER's standard Pipeline Protection and Inspection Agreement to identify construction limitations and inspection requirements when road construction is above the LS-130 pipeline.

V-14. Encroachment Permit:

Prior to OWNER commencing work on the relocation construction, LOCAL AGENCY shall issue a no-fee encroachment permit to OWNER, which shall authorize OWNER to work within the LOCAL AGENCY right of way, and to require the OWNER, at a minimum, to comply with LOCAL AGENCY's requirements for traffic control on Vanden Road, compliance with various environmental permits issued to the LOCAL AGENCY for work in and around Vanden Road, and storm water pollution prevention.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

City of Fairfield ("Local Agency")

By: _____

[Signature]

David A. White
City of Fairfield City Manager

Date: October 14, 2015

SFPP, L.P. ("Owner")

By: _____

(Name)
(Title)
William M. Carter
VP Engineering

[Signature]

Date: 10/13/15